

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CENTRIPETAL NETWORKS, INC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

CIVIL ACTION NO.
2:18cv94

TRANSCRIPT OF VIDEOCONFERENCE BENCH TRIAL PROCEEDINGS

Norfolk, Virginia

May 7, 2020

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BEFORE: THE HONORABLE HENRY COKE MORGAN, JR.
United States District Judge

APPEARANCES:

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: Paul J. Andre
Counsel for the Plaintiff

DAVIS POLK & WARDWELL LLP

By: Neil H. MacBride

- and -

DUANE MORRIS LLP

By: Matthew C. Gaudet
Counsel for the Defendant

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—Rogers, S. - Direct—

1 (Proceedings resumed at 2:08 p.m.)

2 THE COURT: All right, Mr. Andre. You may resume
3 your examination of Mr. Rogers.

4 MR. ANDRE: Thank you, Your Honor.

5 DIRECT EXAMINATION (Resumed)

6 BY MR. ANDRE:

7 Q. Mr. Rogers, when we left off, we were on PTX-231, and I
8 just had highlighted the second bullet point, talking about
9 threat intelligence.

10 Could you explain to the Court what is threat
11 intelligence and how does Centripetal use it?

12 A. Well, threat intelligence is the knowledge of who the bad
13 guys are, where they're coming from, what infrastructure they
14 use, what servers they might attack you from, what locations
15 they might want to send information that they've stolen from
16 your network to.

17 So it's a pretty big area. There's lots of
18 companies now who develop this threat intelligence, find out
19 these things, and publish their list.

20 Q. And it's safe to say on this document you have over 90
21 integrated threat intelligence providers. Who are some of
22 those providers?

23 A. Well, Jonathan in our company manages those providers,
24 but the typical one would be IBM or web route companies like
25 that.

—Rogers, S. - Direct—

1 Q. So you pay these companies for this information?

2 A. Yes, and we also have other providers. We have -- there
3 are groups that do this. The U.S. government provides threat
4 feeds. Industry organizations from a group of banks provide
5 a threat feed for threat intelligence actors who might attack
6 banks and financial institutions, yes.

7 THE COURT: I'm back to where we were at the
8 beginning audio-wise. I don't know what you did, Mr. Rogers,
9 but I could hear you a lot better before than I can now. I
10 don't know what the reason is.

11 THE WITNESS: Okay. I'm going to turn up my audio.

12 THE COURT: Okay.

13 THE WITNESS: Hopefully, that will be better for
14 you. And I will also attempt to speak up.

15 THE COURT: Well, I can hear you fine now.

16 THE WITNESS: Okay, good.

17 THE COURT: All right. You may continue, Mr. Andre.

18 MR. ANDRE: Thank you, Your Honor.

19 BY MR. ANDRE:

20 Q. So is threat intelligence -- is that an important aspect
21 of how Centripetal's technology works?

22 A. Yes. The threat intelligence is what we use to make the
23 discrimination as to whether you should allow or not allow or
24 who is bad, is impinging on your network.

25 Q. And you can take down that document.

—Rogers, S. - Direct—

1 How is Centripetal's technology different or better
2 than what was out there in 2009, when you first got into this
3 business?

4 A. Well, in 2009, again, the whole idea was to look at
5 "what." So the -- you would look at signatures, things like
6 that, of files that were already traversing your network.

7 Q. Does Centripetal patent its inventions in this space?

8 A. Yes.

9 Q. And why do you do that?

10 A. Well, because in order to make our product successful and
11 to protect the interests of our venture capital investors and
12 others, we had to file for protection of our ideas;
13 otherwise, they could just be copied.

14 Q. And you mentioned your venture capital investors. Have
15 you received significant investment in your company?

16 A. Yes.

17 Q. You mentioned that when you started the company, you
18 started by yourself in the basement. How many employees do
19 you have now?

20 A. We've got between 50 and 100.

21 Q. And have you received any awards for your technology and
22 your products in the market?

23 A. Yes, we have.

24 Q. We have a slide here. Could you describe just a couple
25 of these awards?

—Rogers, S. - Direct—

1 A. Sure. For instance, Gartner has an award for new
2 emerging companies called the "Cool Vendor." Gartner
3 typically only follows large, established companies, but they
4 gave us a Cool Vendor Award in 2017. They only do that once
5 in your lifetime, and they'll do it for maybe four or five
6 companies a year, three companies a year, that kind of thing.

7 We also received a Signet 16. Signet is an
8 organization that has a board composed of CSOs from major
9 companies and government agencies, and they get together and
10 look at the new technologies, and they awarded us a Signet 16
11 Innovators Award.

12 We were a FinXTech Labs Award. That's a group of
13 banks in New York City. And we've also been noted by many
14 others. I can keep going, if you'd like.

15 Q. That's unnecessary. Let's talk about some of your
16 customers.

17 Who are some of the customers, just a representative
18 customer that you've been able to place your products with?

19 A. Well, our customers include a range of customers who are
20 the very largest representative customers that are out there,
21 all the way down to very small ones.

22 So we have customers like the Department of Homeland
23 Security, who is an early adopter of our technology, Home
24 Shopping Network, QVC, the NASDAQ bought our systems. So
25 customers like that are at the top end.

—Rogers, S. - Direct—

1 But on the bottom end, we have small companies.
2 Brethren Mutual is an insurance company that does 100 million
3 a year in revenue. New England Die Company is a small
4 defense contractor but very critical in what they do. And so
5 we can protect the smallest to the largest and do it cost
6 effectively for them.

7 Q. You can take that slide down.

8 Now, in 2015, do you recall a meeting you had with
9 Pavan Reddy of Cisco?

10 A. Yes, I sure do.

11 Q. First of all, who is Pavan Reddy?

12 A. Well, Pavan Reddy worked out of Research Triangle Park,
13 and he was responsible for putting together special solutions
14 for Cisco customers who needed to go beyond what products
15 Cisco had.

16 Q. And could you describe your first encounter with
17 Mr. Reddy?

18 A. Yes. I'll never forget it. He called me when I was on
19 the train in New Jersey, going -- coming from visiting a
20 customer, and I had to get off the train at a train stop and
21 do the call, walking up and down the train platform.

22 Do you want me to go into any more detail about the
23 call?

24 Q. Yes, please.

25 A. Okay, sorry. So anyhow, what I did was just describe to

—Rogers, S. - Direct—

1 him what we did, how it worked, how effective it was, why it
2 was so effective, that kind of thing, and Pavan told me that
3 he thought that it would fit into the types of solutions they
4 needed for customers that were -- you know, that needed
5 something that went beyond the offerings that Cisco had at
6 the time.

7 Q. And did you have follow-up meetings with Mr. Reddy or his
8 representatives in 2015?

9 A. Yes, we did. We ended up having a demo for them. We
10 showed them our whole system and all the pieces and explained
11 to him why it was effective. We did that for not just him
12 but for other members of his team, as well.

13 Q. And do you recall in 2016 after -- you meeting with the
14 corporate development team at Cisco?

15 A. That's correct.

16 Q. And did you sign a nondisclosure agreement before you had
17 those meetings?

18 A. Yes, we did.

19 Q. Now in the meetings with Mr. Reddy in 2015, there was no
20 nondisclosure agreement. Is that correct?

21 A. That's correct.

22 Q. And did you only show him at that point mostly
23 public-facing information, nonconfidential?

24 MR. MacBRIDE: Objection, Your Honor; leading.

25 MR. ANDRE: Wait. There's an objection, Mr. Rogers.

—Rogers, S. - Direct—

1 I'm sorry.

2 THE COURT: Yeah, I heard.

3 It was a leading question. I think you can rephrase
4 the question.

5 MR. ANDRE: Sure.

6 BY MR. ANDRE:

7 Q. Did you have a nondisclosure agreement in place when you
8 had your meetings with Mr. Reddy?

9 A. No, we did not.

10 Q. And did you disclose any confidential information to
11 Mr. Reddy in 2015?

12 A. No.

13 Q. Do you recall when you did get a nondisclosure agreement
14 in place with Cisco?

15 MR. MacBRIDE: Objection.

16 THE WITNESS: It was -- am I allowed to answer?

17 THE COURT: Overruled. Go ahead.

18 THE WITNESS: Okay. So it would have been early in
19 2016.

20 BY MR. ANDRE:

21 Q. And was there a meeting -- do you recall a meeting with
22 Cisco in 2016, after you signed the nondisclosure agreement?

23 A. Yes. We had a Webex meeting with people at Cisco from --
24 they gathered together people from all over their cyber
25 security product line, all over the world.

—Rogers, S. - Direct—

1 Q. And what does it mean to you at Centripetal when you sign
2 a nondisclosure agreement?

3 A. It means that they will not disclose the things that we
4 discuss beyond the meeting, beyond the participants.

5 Q. I want to show you what's been marked as PTX-547.

6 Do you recognize the document that's on the screen,
7 Mr. Rogers?

8 A. Yes, I do.

9 Q. And what is this document?

10 A. I believe it's the presentation that we provided to
11 Cisco.

12 Q. Who led the discussion for Centripetal in this meeting
13 with Cisco?

14 A. Jonathan did, Jonathan Rogers.

15 Q. And is he related to you?

16 A. Yes. He's my son.

17 Q. And if you turn --

18 MR. ANDRE: Your Honor, I'd like to move Exhibit
19 PTX-547 into evidence.

20 THE COURT: PTX-547 will be admitted.

21 MR. ANDRE: Thank you, Your Honor.

22 (Plaintiff's Exhibit PTX-547 received in evidence.)

23 BY MR. ANDRE:

24 Q. If you turn to Page 6 of this document, there's a slide
25 entitled "Threat Intelligence." Do you see that?

—Rogers, S. - Direct—

1 A. Yes, I do.

2 Q. Did you inform the people at Cisco how Centripetal uses
3 threat intelligence in its solutions?

4 A. Yes, we did.

5 Q. And if you turn to the next page, Page 7, there's a slide
6 there that says, "Speed and Scale."

7 The first bullet point says, "Centripetal's patented
8 filter algorithms eliminate the speed and scalability
9 problem." Do you see that?

10 A. I do.

11 Q. Did you tell the people at Cisco about your patented
12 filter algorithms?

13 A. Well, I didn't. Jonathan did, of course.

14 Yes, we did. We talked about the filter algorithms
15 and all of the other pieces that required speed and scale of
16 the solution.

17 Q. And you mentioned that your solutions were patented?

18 A. Yes, of course.

19 Q. You can take that slide down.

20 Mr. Rogers --

21 THE COURT: Well, it talks about how many documents
22 you can pass through your system, which seems to be one of
23 the issues, and it says, "1/0 of 30 million packets per
24 second." What does that mean?

25 MR. ANDRE: Could you put the document back up?

—Rogers, S. - Direct—

1 Thank you.

2 THE WITNESS: So when you're operating at a very
3 high network speed -- some of our customers operate all the
4 way up to 100 gigabits now, or certainly beyond 10 gigabits
5 of full line grade. That's bits per second that flow through
6 the interface, and that's because they have so many customers
7 who are coming at their system with such a volume of traffic.
8 Okay. That ends up being broken up into packets, and that's
9 a lot of packets per second.

10 And so 30 million packets per second, each packet
11 having, maybe, 1,000 bits or more, 10,000 bits, that's the
12 speed at which we had to be able to handle these packets,
13 send them through the system, and not delay the packet.
14 Because if you delay the packet, then you'll slow down the
15 experience, and people won't want to come to your web page
16 anymore.

17 THE COURT: Well, you say that's the speed at which
18 we did it.

19 THE WITNESS: Yes.

20 THE COURT: Which you're saying is 30 million
21 packets per second?

22 THE WITNESS: Yes.

23 THE COURT: All right. Now, is that considered
24 average or fast or slow?

25 THE WITNESS: It's super fast for what we were

—Rogers, S. - Direct—

1 doing, because we had to take each packet and examine it and
2 find and compare it against millions of threat indicators,
3 and we had to make each of those comparisons and then be
4 finished with that in time for the next packet to come.

5 If you can't do it within a single packet time, then
6 you'll end up having a queue develop, which will then
7 eventually result in packet loss.

8 THE COURT: A queue? You mean a line, like waiting
9 in line? Is that what you mean?

10 THE WITNESS: That's right. It would be like
11 waiting in line, but the line is only so long, so if you
12 don't take people out of the line fast enough, the line will
13 overflow, and they'll have to send people away.

14 THE COURT: Well, the number of packets that go
15 through your system for various customers, does that vary
16 with the size of the customer or --

17 THE WITNESS: Yeah, that's right; it typically does.
18 I would find that for ranging all the way from a small
19 business, it might be 100 megabits per second, all the way up
20 to our largest customers, some of which are now going faster
21 than the 30 million packets per second.

22 THE COURT: So you can speed up the system if there
23 are more packets to deal with? Is that what you're saying?

24 THE WITNESS: That's right. We're working on that
25 all the time. We've got one in the lab that goes 10 times

—Rogers, S. - Direct—

1 faster than our fastest that we have today.

2 THE COURT: All right.

3 BY MR. ANDRE:

4 Q. And the first part of that line says, "I/O." What does
5 that stand for?

6 A. Input/output. It means that the packet goes both
7 directions. You have to look at both sides, because you
8 could be receiving packets from a bad threat actor, or you
9 could be sending packets to a bad threat actor. It goes both
10 ways. You have to look at both at the same time.

11 Q. You're examining packets going in and out of the system?

12 A. That's correct.

13 Q. And you could do that back at the time of this meeting at
14 30 million packets per second?

15 A. Yes, and we regularly gave demos of that capability, just
16 so there would be no doubt.

17 Q. When it says, "filter against 5 million complex IOCs" --
18 first of all, what is an IOC?

19 A. Well, in the trade we call it an indicator of compromise.
20 So if your network has traffic going out of it, let's say,
21 and that traffic is going to a place in Romania that we know
22 is hosted by criminals, cyber criminals, that's an indicator
23 that you've been compromised.

24 So that's the lingo that we use in the industry to
25 talk about these things.

—Rogers, S. - Cross—

1 Q. Thank you. You can take that document down.

2 And all this information you discussed with Cisco in
3 the February 2016 meeting?

4 A. Yes.

5 Q. Mr. Rogers, how has having to compete against your own
6 technology in the marketplace affected your business?

7 A. Well, it's impossible to compete against your own
8 technology if you have, you know, a large incumbent, a
9 competitor. That competitor has already sold into virtually
10 every customer you would go to.

11 You tell them about your wonderful new technology
12 that can help them, and, you know, they'll talk to their
13 incumbent and say, "What do you think about this?" The
14 incumbent just says, "Well, we do the same thing. And that
15 other company is pretty small, too, and so it's a risk for
16 you," and it kills your business. It's devastating to your
17 business. It makes it really hard.

18 Q. Thank you, Mr. Rogers.

19 MR. ANDRE: Your Honor, I have no further questions.

20 THE COURT: All right. Does defendant wish to
21 cross-examine?

22 CROSS-EXAMINATION

23 BY MR. MacBRIDE:

24 Q. Good afternoon. Neil MacBride, for Cisco Systems.

25 MR. MacBRIDE: Can the Court and counsel and the

~~Rogers, S. - Cross~~

1 witness hear me?

2 THE COURT: Not very well.

3 THE WITNESS: I can.

4 MR. MacBRIDE: Your Honor, I'll keep my voice up.
5 Is that better?

6 THE COURT: Yes.

7 MR. ANDRE: And, Your Honor, this is Mr. Andre. Can
8 we ask that the defendants e-mail the cross-examination
9 exhibits, if there are any, at this point?

10 MR. MacBRIDE: Yes, Mr. Andre. Thank you for
11 sending yours over this morning. They came a bit late, but
12 we'll send ours right now. In fact, they may have already
13 been sent.

14 MR. ANDRE: Thank you.

15 MR. MacBRIDE: Confirming they've been sent.

16 THE COURT: You're going to send it to me, as well?

17 MR. MacBRIDE: Your Honor, I believe it should have
18 been in your binder, delivered this morning. It's a two-page
19 document.

20 (There was a pause in the proceedings.)

21 THE CLERK: Do you know where the summary documents
22 are for Cisco? Centripetal brought the summaries over this
23 morning, but the Judge had asked for a summary for each
24 witness. That's what he's looking for at the moment.

25 THE COURT: I've got all the exhibits, but I don't

~~Rogers, S. - Cross~~

1 have the summary of the outline of the areas of
2 cross-examination, is what I don't have. I guess the
3 document that was just e-mailed to Mr. Andre -- I don't have
4 it.

5 Have we got it? Have you got it?

6 THE CLERK: No, sir, I don't have it.

7 MR. NOONA: I don't see it, either. This is Steve
8 Noona.

9 MR. MacBRIDE: Your Honor, my understanding is that
10 we e-mailed it to Ms. Stacie Countess, at the court, this
11 morning.

12 THE CLERK: She's not available at the moment, so,
13 Mr. Noona, can you forward that to me, please?

14 MR. NOONA: Mr. Noona here. I don't have of it.
15 I'm looking for it right now myself.

16 THE CLERK: If someone can forward it to me, instead
17 of -- Ms. Countess is off today.

18 MR. MacBRIDE: Mr. Carr, our local counsel, I can
19 have him send it over again right now.

20 THE CLERK: Thank you.

21 MR. MacBRIDE: My apologies that it has not arrived.

22 (There was a pause in the proceedings.)

23 MR. MacBRIDE: Ms. Baxter, we're forwarding that
24 document to you now.

25 THE CLERK: Thank you. I'll let you know as soon as

~~Rogers, S. - Cross~~

1 I get it.

2 MR. MacBRIDE: My apologies, Your Honor and
3 Ms. Baxter, for the inconvenience.

4 THE COURT: I don't know -- Stacie has the day off.
5 I don't know if she has it or not, but I don't have it in my
6 book. That's all I know.

7 You can go ahead and proceed, Mr. MacBride.

8 MR. MacBRIDE: All right, Your Honor, I will
9 proceed. And, again, my apologies to the Court and
10 Ms. Baxter. Hopefully, opposing counsel has received the
11 document at this point.

12 BY MR. MacBRIDE:

13 Q. Good afternoon, Mr. Rogers.

14 A. Good afternoon.

15 Q. Mr. Rogers, we've not met before, at least to my
16 recollection, so it's nice to meet you. I'll be asking you
17 some questions this afternoon, and I just want to make sure,
18 again, that you can hear me okay.

19 A. Just fine.

20 Q. Great. So if at any point you can't -- I've got spring
21 allergies, so if for any reason you can't hear me, just ask
22 me, and I'll be happy to speak up or reask my question.

23 So, Mr. Rogers, if I may, I'd like to start by
24 clarifying a couple of things that your lawyer, Mr. Andre,
25 asked you on direct examination.

~~Rogers, S. - Cross~~

1 And, in particular, I wanted to ask you about
2 RuleGATE, Centripetal's product, and how it was introduced to
3 the market when it -- in recent years. And I just want to
4 make sure I'm correct that the way your company described
5 RuleGATE to the market was in terms of "Packet filters
6 located at network security boundaries need to be able to
7 enforce highly dynamic security policies with millions of
8 rules but without impacting network performance and user
9 quality of experience."

10 Is that how RuleGATE was described to the community?

11 A. Yeah, that's part of it.

12 Q. And to clarify, did you also tell the market that
13 RuleGATE packet filters from Centripetal networks meet these
14 performance specifications, the ones I just alluded to?

15 A. Well, there's a time continuum here, so we did
16 different -- we had initial capabilities, and then we added
17 to those capabilities, and then we added to those
18 capabilities, and so on, across a period of time.

19 So what time are you talking about here? Why don't
20 we turn to Plaintiff's Exhibit 1591, which was a document
21 your lawyer, Mr. Andre, previously asked you about. If we
22 could turn to Page 2 of this document --

23 MR. MacBRIDE: Your Honor, again, this is
24 Plaintiff's Exhibit 1591, previously moved into evidence.

25 THE COURT: This is one of the plaintiff's exhibits?

~~Rogers, S. - Cross~~

1 MR. MacBRIDE: That's correct, Your Honor, and I'm
2 on the second page, Page 2, of a five-page document, and the
3 Bates number ending in 228.

4 THE COURT: Okay.

5 BY MR. MacBRIDE:

6 Q. And so I will ask Mr. Simon to go to the first paragraph
7 entitled "Summary," and, starting about midway down, if you
8 could, please, highlight, Mr. Simon, the sentence starting
9 "Packet filters..." and if you could highlight that sentence
10 and the next sentence at this point, please.

11 Mr. Rogers, again, am I correct that you
12 described -- your company described to the industry --
13 RuleGATE this way?

14 A. Let's see. First of all, we talk about what a solution
15 would look at, so that's the sentence on packet filters.

16 And then we spoke about -- in the second sentence,
17 we said that the RuleGATE packet filter would meet that
18 performance specification.

19 Q. Right. So this is how you described your technology to
20 the industry.

21 A. Well, it's a basic piece of the whole system, yes. It's
22 how we would describe this piece of it.

23 Q. Well, isn't it true, Mr. Rogers, that after you describe
24 packet filters in these two sentences, the next thing you
25 told the market is that your product RuleGATE is "readily

~~Rogers, S. - Cross~~

1 combined with conventional defenses to accelerate existing
2 cyber security infrastructure"?

3 A. What's your question?

4 Q. Do you agree that when you put out this document to
5 industry, you described your product RuleGATE as being
6 "readily combined with conventional defenses," conventional
7 cyber security defenses, "to accelerate existing cyber
8 security infrastructure"?

9 A. Yeah, because the existing infrastructure wasn't getting
10 the job done, and so we designed our system in such a way
11 that you could leave the existing infrastructure in place and
12 just add what we did.

13 Q. So you told industry that your product could be combined
14 with security that was already being done, conventional
15 security, correct?

16 A. Well, most of the customers didn't want to take anything
17 out, so, yes, we would leave what you got there and put this
18 new system in, along with the things you already had.

19 Q. And, Mr. Rogers, when you put this information out to
20 industry, your company gave some examples of conventional
21 cyber defenses, right?

22 A. We may have. I don't know.

23 Q. Well, if I could direct your attention to the first
24 sentence and ask Mr. Simon to highlight that at the top
25 there.

~~Rogers, S. - Cross~~

1 A. Yes, of course. Okay. I see what you're saying.

2 Q. All right. So Centripetal recognized, for example, that
3 it was totally conventional to have things like network
4 firewalls, correct?

5 A. Yes.

6 Q. And you agree you told potential customers that it was
7 conventional for clients to use -- to have cyber defenses in
8 their routers, correct?

9 A. Some do. Some had boards that would plug into their
10 routers that would be firewalls, sure.

11 Q. Right. And Centripetal -- you didn't invent any of these
12 conventional cyber defenses, correct?

13 A. Invent the defenses that were failing? No, we didn't
14 invent those.

15 Q. And Centripetal didn't invent packet filtering, either,
16 correct?

17 A. The idea of packet filtering we did not invent, but we
18 did invent the filtering systems that we created.

19 Q. Packet filtering was around long before Centripetal was
20 founded, true?

21 A. Well, it depends on what you mean by packet filtering.
22 What were you filtering on, what types of things? Were you
23 just looking to see if there was an address that you could
24 move a packet through a router on or not?

25 Packet filtering covers a huge range of possible

—Rogers, S. - Cross—

1 things you might do, most of which have nothing to do with
2 cyber security.

3 Q. Centripetal did not invent the concept of packet
4 filtering in cyber security, true?

5 A. Let's see. No, I'm not -- I don't agree with that. It
6 depends on what kind. You can't just make such a broad
7 statement in filtering.

8 Q. Is it true, Mr. Rogers, that this presentation very
9 clearly told potential customers that your product RuleGATE
10 could be combined with conventional defenses, conventional
11 security defenses, cyber security?

12 A. It did not have to remove -- we wanted to make the point
13 that it didn't have to remove what they already had.

14 Many of the banks and others that we were talking to
15 at the time had these things in. They were required to have
16 a firewall, a web proxy, and an IPS. They were required to
17 have it. So we couldn't go in and say, "Well, you know, if
18 you put our system in, you don't need these things." So we
19 worked in conjunction with them.

20 Q. Mr. Rogers, let me try and put it to you this way:

21 The lines that you see in the exhibit that are
22 highlighted that I've asked you about, those are all still
23 correct, right? You're not backing away from any of those
24 statements?

25 A. No. We've made those statements. I'm not backing away

~~Rogers, S. - Cross~~

1 from them.

2 Q. All right. Let's shift gears, Mr. Rogers.

3 You told your counsel that you're the CEO and
4 founder of Centripetal Networks?

5 A. Yes.

6 Q. You founded the company?

7 A. Yes.

8 Q. And would you agree that as the CEO, you have the
9 ultimate responsibility for any actions your company takes?

10 A. I do, you know, but I have a team, and I'm a good
11 delegator. I don't make every decision. So I don't do that.

12 Q. And, in fact, you delegated the responsibility of
13 managing this lawsuit against Cisco to your son, Jonathan
14 Rogers; is that right?

15 A. I did.

16 Q. And your view, your recollection, is that Jonathan is the
17 one who came up with the idea for this lawsuit, correct?

18 THE COURT: The idea of what? I didn't get that.
19 The lawsuit?

20 MR. MacBRIDE: Your Honor, I asked Mr. Rogers
21 whether he agreed that his view was that his son Jonathan is
22 the individual who probably came up with the idea to sue
23 Cisco.

24 THE WITNESS: I think we all realized that if there
25 was copying going on of our technology, we would need to

~~Rogers, S. - Cross~~

1 enforce that in some way. So I don't know whose idea it was.

2 BY MR. MacBRIDE:

3 Q. Do you recall testifying at your deposition, Mr. Rogers,
4 that it was probably Jonathan who came up with that idea?

5 A. Well, yeah, probably, but I can't say for sure. It was a
6 discussion that was ongoing among the team members, so...

7 Q. Mr. Rogers, let's shift gears a little bit and talk about
8 NetFlow, a concept that's already been introduced to the
9 Court.

10 And just to clarify, you agree that Centripetal has
11 never developed a security product based on NetFlow, correct?

12 A. Not really, no. We built a product that could integrate
13 with NetFlow, if you wanted it to, but, no, I don't think we
14 specifically went out there and said, "Let's integrate with
15 NetFlow."

16 Q. My question is: You agree that Centripetal -- I'm not
17 asking about integration.

18 My question is: Your company never invented a
19 security product based on NetFlow; is that right?

20 A. NetFlow preexisted our product.

21 Q. Let me try again.

22 Do you agree -- do you remember testifying in
23 December, at which time you said your company had never
24 developed a security product based on NetFlow? Do you agree?

25 A. No, I don't agree, because NetFlow is just a protocol,

~~Rogers, S. - Cross~~

1 and so there's no reason why we couldn't absorb that protocol
2 and use it if it was useful to do so, so I don't agree.

3 Q. I believe you may have testified differently in the past,
4 Mr. Rogers. If we could please turn to your December 2019
5 deposition, at Page 216.

6 MR. MacBRIDE: Your Honor, this should be in your
7 binder of your cross-examination materials.

8 THE COURT: Okay. I have a deposition that was
9 taken on December 18th --

10 MR. MacBRIDE: Correct.

11 THE COURT: -- is what it says on mine.

12 MR. MacBRIDE: Yes, that's correct, Your Honor. It
13 is Mr. Rogers' deposition from December 18, 2019.

14 THE COURT: What page?

15 MR. MacBRIDE: Page 216, and lines 13 to 18.

16 THE COURT: Wait a minute. Page what, now?

17 THE CLERK: 216.

18 THE COURT: What?

19 THE CLERK: 216.

20 THE COURT: Well, okay. The Court's rule is that
21 you read the question and the answer. We don't allow anybody
22 to paraphrase what he said. We just allow whatever question
23 and answer that you think is inconsistent with his testimony,
24 you just read it.

25 So we're on line 13 of Page 216?

~~Rogers, S. - Cross~~

1 MR. MacBRIDE: That's correct, Your Honor.

2 BY THE CLERK:

3 Q. And, Mr. Rogers, this deposition was previously provided
4 to your counsel.

5 THE COURT: I've got it. I'm looking at it.

6 MR. MacBRIDE: Thank you.

7 BY MR. MacBRIDE:

8 Q. So, Mr. Rogers, on December 18, 2019, I'm reading from
9 the deposition:

10 "QUESTION: To your knowledge, has Centripetal ever
11 done any development work in developing a security product
12 that's based on NetFlow?

13 "ANSWER: No. We felt that threat intelligence
14 would be a much better way to address cyber concerns. It's a
15 different market."

16 Sir, were you asked that question, and did you give
17 that answer at your deposition?

18 A. Well, I'm sure I did give it at my deposition. Thank you
19 for putting this up for me.

20 So what is your question?

21 Q. You've answered it.

22 And, Mr. Rogers, isn't it a fact that instead of
23 using NetFlow, your company's product RuleGATE, instead,
24 applies threat indicators to review packets? True?

25 A. That's correct.

—Rogers, S. - Cross—

1 Q. In fact, Centripetal's product applies millions of threat
2 indicators to those packets at wire speed; is that right?

3 A. That's right.

4 Q. And by "wire speed" you mean the technology that applies
5 these millions of indicators to packets so fast, in real
6 time, that a person sitting at their computer doesn't detect
7 any delay; is that correct?

8 A. That's correct.

9 Q. But that's not what Cisco does, in your understanding.
10 Don't you agree that, even today, Cisco's equipment cannot
11 apply millions of threat indicators at speed?

12 A. Well, our patents cover lots of different things besides
13 just the filtering algorithm. To be effective at what we do,
14 to be really effective, you have to do it at wire speed, but
15 that doesn't mean that you don't get some benefit from
16 copying us and doing it even at a lower speed.

17 Q. Mr. Rogers, I think you answered a different question, so
18 let me try again.

19 Do you recall testifying, sir, that, even today,
20 Cisco's equipment cannot apply millions of threat indicators
21 at wire speed?

22 A. I haven't analyzed Cisco's equipment, so I don't know.

23 Q. I believe you may have testified differently in the past,
24 Mr. Rogers. If we could turn to Page 94 of your deposition.

25 MR. MacBRIDE: Your Honor, this is the same exhibit,

~~Rogers, S. - Cross~~

1 of course, at Page 94 and at pages -- excuse me, at lines 8
2 through 13.

3 Your Honor, have you found the passage? May I
4 proceed, Your Honor?

5 THE COURT: Yes.

6 MR. MacBRIDE: Thank you.

7 BY MR. MacBRIDE:

8 Q. Mr. Rogers, again, for the record, I'm reading from your
9 December 18, 2019 deposition. You were asked the following
10 question:

11 "QUESTION: To your knowledge, Cisco's equipment
12 isn't performing at this level, correct?

13 "ANSWER: Not making any sort of decisions on threat
14 intelligence, can a Cisco router run at a hundred gigabytes?
15 Yeah, of course, but they can't make the security decisions
16 at that speed."

17 Mr. Rogers, were you asked that question, and did
18 you give that answer at your deposition?

19 A. I believe I was, yes. I think that's different than the
20 question you just asked me, but yes.

21 Q. Mr. Rogers, let's move now and talk a little bit about
22 your company's patents.

23 In your view, isn't it correct that all of your
24 company's patents concern the techniques that allow
25 Centripetal to apply these millions of threat indicators at

~~Rogers, S. - Cross~~

1 wire speed?

2 A. Is that a question?

3 Q. Have you agreed that all of your patents involve this --
4 ultimately involve this technique that allows you to apply
5 millions of threat indicators at speed?

6 THE COURT: At what?

7 THE WITNESS: All of the patents have to work
8 together. Your Honor, did you want to ask me something?

9 THE COURT: I heard the word "speed," but it just
10 sounded like he said, "at speed," it didn't say what the
11 speed was, or at least I didn't hear it.

12 MR. GAUDET: Sure. Let me ask again.

13 BY MR. MacBRIDE:

14 Q. Mr. Rogers, do you remember testifying previously that
15 all of Centripetal's patents concerned the technique that
16 allows the application of millions of threat indicators at
17 wire speed?

18 A. I probably did testify to that, because our system needed
19 to operate at the speed to be maximally effective, but that
20 doesn't mean that it has no effectiveness if it operated at a
21 lower speed.

22 Q. Again, my question was you agree that all of your patents
23 involve the concept of applying millions of threat indicators
24 at wire speed, correct?

25 A. No, absolutely not. I don't agree with that.

—Rogers, S. - Cross—

1 Q. You don't -- you didn't previously testify that all of
2 your patents involved this concept?

3 A. All of -- the entire system that's put together, using
4 all of the patented technologies, are all designed to run at
5 that speed, but it doesn't mean they have to. A patent on
6 correlation doesn't have to be relative to the speed of the
7 correlation.

8 Q. Mr. Rogers, I believe you testified different previously,
9 and so I would ask that Page 100 of your deposition --

10 THE COURT: It's up to the jury to decide if he
11 testified differently.

12 MR. MacBRIDE: Understood, Your Honor.

13 THE COURT: And I'm the jury.

14 MR. MacBRIDE: Yes, Your Honor. I was simply laying
15 a predicate to impeach, knowing the Court's rules.

16 BY MR. MacBRIDE:

17 Q. So I'm at Page 100 of your December 18th, 2019
18 deposition, lines 5 to 17.

19 And, Mr. Rogers, I'm going to read the question and
20 answer from your transcript that you were asked.

21 Question by Mr. -- I'm sorry. My question was:

22 "Which patents went to the original idea that was
23 the genesis of the Centripetal advanced packet filtering
24 algorithm techniques that led to the millions of rules of
25 performance level?"

~~Rogers, S. - Cross~~

1 There was an objection by your lawyer.

2 "ANSWER: My answer is all of them. If you wanted
3 to, you could probably look at the oldest ones and start with
4 the oldest ones, moving forward. The oldest ones gave us
5 something, and then there were more improvements, and more
6 improvements, and so on, all the way through."

7 Mr. Rogers, my question is: Were you asked that
8 question, and did you give that answer in your deposition?

9 MR. ANDRE: Your Honor, this is Mr. Andre.
10 Objection. This is not impeachment. It's a completely
11 different question that he's asked here at trial.

12 MR. MacBRIDE: No, it's not, Your Honor. Excuse me.

13 THE COURT: I think he's answered -- I mean, did you
14 say that, Mr. Rogers?

15 THE WITNESS: Did I say what's in the transcript?

16 THE COURT: Yes.

17 THE WITNESS: Sure.

18 THE COURT: Okay. He's answered the question.

19 THE WITNESS: I don't think what's in the transcript
20 is what he's asking me, though.

21 THE COURT: Well, you're entitled to explain your
22 answer.

23 THE WITNESS: I'm happy to. So --

24 THE COURT: Well, you don't -- I mean, I think you
25 just did.

~~Rogers, S. - Cross~~

1 THE WITNESS: Okay. All right.

2 THE COURT: As I said, I'm the jury, so the Court
3 will decide the extent to which, if any, the prior testimony
4 is inconsistent with the testimony today.

5 MR. MacBRIDE: Thank you, Your Honor. May I
6 proceed?

7 THE COURT: Yes.

8 MR. MacBRIDE: Thank you.

9 BY MR. MacBRIDE:

10 Q. Mr. Rogers, is it your understanding as a technologist --
11 would you agree that Centripetal's first three patents were
12 the ones that's enabled your company to get this speed
13 breakthrough we've been discussing?

14 A. No. They enabled us to start on that path, but they were
15 not all that we needed to bring it to market as a product
16 that worked.

17 So you're probably a little confused about how
18 technology works, I'm sensing, but it takes lots of pieces,
19 and the first piece that works in a lab doesn't necessarily
20 mean that it's all ready to be in a product. So we're a
21 service.

22 Q. Mr. Rogers, let's go back to your deposition, to
23 Page 101, at line 2, lines 2 to 18.

24 Mr. Rogers, I'll read this portion from the
25 transcript:

~~Rogers, S. - Cross~~

1 "QUESTION: I'm not asking you, Mr. Rogers, whether
2 elements of your patents are used in your APF. I'm talking
3 about achieving the five million indicators of compromise and
4 being able to apply that at the full line rate without any
5 latency."

6 Your lawyer objected. The question continues:

7 "And so with respect to that ability, do you have
8 any understanding as to which of your patents are directed to
9 the core packet filtering techniques that allow you to
10 achieve that level?"

11 Mr. Andre objects.

12 "ANSWER: Speaking of the technology, the first
13 three enabled us to get the speed breakthrough. There was a
14 lot more that had to be added, but that got us there."

15 Mr. Rogers, were you asked this question, and did
16 you give this response in your deposition?

17 A. Yes, I was asked this question, and I gave this response.

18 Are you saying that I have to have memorized my
19 previous testimony? Because I don't think there's anything
20 inconsistent in my answers to you and this testimony.
21 There's nothing inconsistent. So what are you saying?

22 THE COURT: Well, that's for the Court to decide,
23 Mr. Rogers.

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: I mean, you can explain your answer, but

~~Rogers, S. - Cross~~

1 just saying that it's not inconsistent is not an explanation,
2 that's an argument.

3 THE WITNESS: Okay. I would like to explain my
4 answer, then.

5 THE COURT: All right. You can explain it.

6 THE WITNESS: Okay. So we had to get over a hurdle
7 of basic speed. The first three patents did enable us to get
8 over that hurdle. The other patents were not directed at
9 high speed. They just had to be implemented in such a way
10 that they could be high speed and that they wouldn't slow
11 down the rest of the system. I think that's totally
12 consistent. I think so.

13 THE COURT: All right. You may proceed,
14 Mr. MacBride.

15 MR. MacBRIDE: Thank you, Your Honor.

16 BY MR. MacBRIDE:

17 Q. Mr. Rogers, the first three patents that we've just
18 discussed, those are not asserted against Cisco in this case,
19 correct?

20 A. I don't know.

21 Q. Do you remember testifying previously in your deposition
22 that these three patents, your first three, are not ones that
23 Cisco is accused with?

24 THE COURT: Not ones that what?

25 MR. MacBRIDE: Your Honor, I'm happy to ask the

~~Rogers, S. - Cross~~

1 question again, if you didn't hear it.

2 THE COURT: I didn't hear the end of it.

3 MR. MacBRIDE: Yes. I'll keep my voice up, Your
4 Honor.

5 My question to Mr. Rogers was whether he agreed that
6 his first three patents, the ones we've been discussing, that
7 those three patents have not been asserted in this case
8 against Cisco.

9 THE WITNESS: I believe they are not, to the best of
10 my recollection.

11 BY MR. MacBRIDE:

12 Q. Isn't it right, Mr. Rogers, that your company acquired
13 the first of those three patents from a company called Great
14 Wall?

15 A. That's incorrect.

16 Q. Well, let me ask it this way: Isn't it correct that the
17 three patents, the first three patents, were acquired or
18 licensed from a company called Great Wall and Wake Forest
19 University? That's where those three patents came from?

20 A. Yes. That was two separate transactions.

21 Q. Switching gears just a bit, Mr. Rogers, you founded
22 Centripetal in 2009, right?

23 A. Yes.

24 Q. And your company sold your first RuleGATE product in
25 December of 2014 or thereabouts; is that right?

~~Rogers, S. - Cross~~

1 A. That's correct.

2 Q. And before that first sale for RuleGATE was in
3 development, isn't it true that you, sir, visited the Cisco
4 website to look at what Cisco was doing in the security
5 space?

6 A. I honestly don't recall, but it's not impossible.

7 Q. So you agree that you probably visited the Cisco website
8 during this time?

9 A. Probably.

10 Q. And, Mr. Rogers, I assume you have no reservation about
11 going to Cisco's public website, correct?

12 A. It's public information, so...

13 Q. Right. You wouldn't expect a company, Cisco or any
14 company, to put confidential information on their public
15 website, true?

16 A. That's correct.

17 Q. And Centripetal doesn't put confidential information on
18 its website, correct?

19 A. That's correct.

20 Q. And during RuleGATE's development during this 2009 to
21 2014 period, you did not regard Cisco as a competitor, true?

22 A. Say that again. Ask that question again.

23 Q. At the time that RuleGATE was under development leading
24 up to 2014, you did not regard Cisco as a competitor,
25 correct?

~~Rogers, S. - Cross~~

1 A. That's correct.

2 Q. And that's because Cisco was not in Centripetal's area of
3 expertise, correct?

4 A. Well, I don't know what Cisco was doing. Were they in --
5 I mean, that's a very vague question.

6 Q. Do you remember testifying in your deposition that you
7 did not think Cisco was a competitor because they didn't
8 share your company's area of expertise?

9 A. I could have said that, yes.

10 THE COURT: Let's always use the question and answer
11 and not -- but he's already answered the question, so we'll
12 move on.

13 MR. MacBRIDE: Very good, Your Honor. We'll switch
14 gears again.

15 BY MR. MacBRIDE:

16 Q. Mr. Rogers, you've heard of a company called Threat Grid,
17 correct?

18 A. Yes.

19 Q. And Centripetal purchased a subscription to Threat Grid's
20 threat intelligence information, correct?

21 A. No, I don't think that's correct.

22 Q. You don't remember testifying that you purchased their
23 feed?

24 A. I think, as it turns out, I didn't -- we didn't purchase
25 their feed. So I might have thought that we did, but we

~~Rogers, S. - Cross~~

1 didn't.

2 Q. Do you remember testifying in your deposition under oath
3 that you --

4 THE COURT: We're not going to do it that way,
5 Mr. MacBride. You're going to have to read the question and
6 the answer. I tried to get that message over a minute ago.

7 MR. MacBRIDE: Thank you, Your Honor.

8 BY MR. MacBRIDE:

9 Q. Mr. Rogers, if we could go back to Page 114 of your
10 deposition, and we're at line 14 to 21.

11 Mr. Rogers, I'm going to read this into the record:

12 "QUESTION: What was the nature of the relationship
13 between Threat Grid and Centripetal?"

14 Mr. Andre objects.

15 "ANSWER: What was the nature?"

16 "QUESTION: What was the nature of the relationship?"

17 "ANSWER: We purchased their feed. We utilized
18 their feed. It's a subscription of some kind."

19 Did you give that answer, sir?

20 A. Yes, I did.

21 Q. And so as part of this subscription, your company would
22 have sent -- excuse me.

23 As part of this subscription, Threat Grid would have
24 sent its threat intelligence to Centripetal, correct?

25 A. So let me explain my previous comment.

~~Rogers, S. - Cross~~

1 So I thought we had purchased it -- I did not handle
2 that part of it -- but what happened was we had a partnership
3 with Threat Grid, where they had customers that might like to
4 protect themselves using our system, and we would use their
5 Threat Grid data feed, and then Threat Grid could gain a
6 customer by selling their Threat Grid data feed directly to
7 that customer. And I think that happened several times.

8 So that explains what was going on there. We
9 actually didn't license from Threat Grid.

10 Q. So were you --

11 A. That's my explanation.

12 Q. Excuse me for interrupting.

13 Mr. Rogers, just to make sure I'm clear on your
14 testimony today, are you saying that Threat Grid did not send
15 its threat intelligence to your company?

16 A. We did receive Threat Grid intelligence at our company,
17 as far as I remember.

18 Q. But your company didn't, in turn, send any of its
19 confidential information to Threat Grid, correct?

20 A. No, we did not --

21 Q. And you're aware that --

22 A. -- as far as I'm aware.

23 Q. Excuse me.

24 And you're aware that Threat Grid is now part of
25 Cisco; is that right?

~~Rogers, S. - Cross~~

1 A. Yes.

2 Q. Let's talk about another company, Mr. Rogers. Are you
3 familiar with a company called Sourcefire?

4 A. Yes.

5 Q. And Sourcefire existed before Centripetal; is that right?

6 A. That's correct.

7 Q. And Sourcefire produced a product called intrusion
8 detection system. Is that right?

9 A. That's right.

10 Q. And Sourcefire's system was widely known in the industry
11 at the time, applying packet filtering rules, going back to
12 the early 2000s; is that right?

13 MR. ANDRE: Objection, Your Honor; lack of
14 foundation.

15 THE COURT: Overruled.

16 BY MR. MacBRIDE:

17 Q. Mr. Rogers, I can ask it again, if you need to be
18 reminded of the question.

19 A. What was the question, again?

20 Q. Sure. Do you agree that the Sourcefire system was widely
21 known in the industry as applying packet filtering rules,
22 going back to the 2000s?

23 A. No.

24 Q. Do you agree that Sourcefire's intrusion detection system
25 is what's known as an inline system?

—Rogers, S. - Cross—

1 A. I don't know what you mean by that.

2 Q. Are you familiar with the term "inline," Mr. Rogers?

3 A. Yes, I am, but I don't know what you mean by that.

4 Q. Let me try again.

5 Are you aware that Sourcefire's intrusion detection
6 system, also known as IDS -- are you aware that that product
7 of Sourcefire was what is known as an inline system?

8 A. Explain to me what you mean by "inline." "Inline" can
9 have many different meanings. So I can't answer your
10 question until you define your terms.

11 Q. So you're not familiar with concepts of inline and out of
12 bounds?

13 A. I think you're not familiar with those terms, so please
14 explain.

15 Q. I'll move on.

16 Mr. Rogers, do you agree with me that Centripetal
17 did not invent Sourcefire's intrusion detection system?

18 A. That's correct.

19 Q. And in 2012, isn't it true that you thought that
20 Sourcefire's intrusion detection system was completely
21 different than Centripetal's products?

22 A. That, I don't know the answer to. I think so, yes.

23 Q. Do you remember saying at your deposition that they were
24 completely different products back in 2012?

25 THE COURT: Where did he say it?

~~Rogers, S. - Cross~~

1 MR. MacBRIDE: Your Honor, we can turn to
2 Mr. Rogers's deposition at Page 235, lines 2 through 14.

3 BY MR. MacBRIDE:

4 Q. And that section is now displayed on the screen,
5 Mr. Rogers. I'll read this for the record:

6 "QUESTION:" --

7 THE COURT: What page are we on here?

8 MR. MacBRIDE: I apologize, Your Honor. We're at
9 Page 235 of Mr. Rogers' December deposition, Page 235,
10 line 2, toward the top of that page.

11 THE COURT: Okay.

12 BY MR. MacBRIDE:

13 Q. Mr. Rogers, "QUESTION: If I understand your testimony
14 correctly, in 2012 you viewed the Centripetal product to be
15 superior to the Sourcefire intrusion detection system."

16 Mr. Andre objects.

17 "ANSWER: In 2012 we thought they were completely
18 different products for different purposes. The only thing
19 that caught my eye was that Sourcefire was saying, oh, we
20 stop 97 percent of attacks, which we did not believe at all.
21 I think that's been proven not to be true. If it were true,
22 we wouldn't have the cyber security problems we have today."

23 Mr. Rogers, were you asked that question, and did
24 you give that answer?

25 A. Yes.

~~Rogers, S. - Cross~~

1 MR. ANDRE: Objection, Your Honor. The previous
2 question is about the intrusion detection system, and this is
3 about the intrusion prevention system, two completely
4 different technologies.

5 THE WITNESS: That's true.

6 THE COURT: Well, I'm lost on that. I didn't pick
7 up that distinction.

8 MR. ANDRE: Yes. Your Honor, Mr. MacBride was
9 talking about Sourcefire's intrusion detection system, and
10 this was a question about Sourcefire's intrusion prevention
11 system, and they are two different technologies.

12 MR. MacBRIDE: I'm happy to reask the question.

13 BY MR. MacBRIDE:

14 Q. Mr. Rogers, in 2012 is it true that you thought
15 Sourcefire's intrusion prevention system was completely
16 different than your products?

17 A. That's a different question than you referred to in the
18 last question.

19 THE COURT: Well, answer the one on the floor.

20 THE WITNESS: Yes, sir. So, please, ask me that
21 question again.

22 BY MR. MacBRIDE:

23 Q. Certainly. My question is: In 2012 isn't it true that
24 you thought that Sourcefire's intrusion prevention system was
25 completely different than Centripetal's products and served

~~Rogers, S. - Cross~~

1 completely different purposes?

2 A. Yes.

3 Q. Mr. Rogers, a couple questions about Centripetal's
4 investors. You spoke about this with Mr. Andre.

5 You're familiar with a financial institution called
6 Oppenheimer, correct?

7 A. Yes.

8 Q. And your company retained Oppenheimer in 2015 or '16,
9 correct?

10 A. I believe so.

11 Q. And you asked Oppenheimer to find sources of capital for
12 your company, true?

13 A. Yes.

14 Q. Oppenheimer then reached out to about 148 companies on
15 your behalf to seek capital; is that right?

16 A. No, I don't think so.

17 Q. Well, you're aware that Cisco was one of the companies,
18 one of the many companies, that Oppenheimer reached out to on
19 your behalf, correct?

20 A. No, you say "many." I didn't say "many."

21 Q. Are you aware that Oppenheimer reached out to a number of
22 companies?

23 A. Yes, it was more than one.

24 Q. Was it more than ten?

25 A. I don't know. I'm not sure.

—Rogers, S. - Cross—

1 Q. Could have been more than ten, true?

2 A. It could have been, of course.

3 Q. And are you aware that in response to Oppenheimer's
4 outreach to Cisco for funding, Cisco declined to provide any
5 funding to your company?

6 A. Yes.

7 Q. And do you agree that of all the companies that
8 Oppenheimer reached out to, only one made an offer to your
9 company?

10 A. I believe that's correct.

11 Q. And that company --

12 A. I didn't manage that, so you should ask Jonathan that
13 question. He was dealing with the day-to-day on that.

14 Q. Do you recall that the one company was named Fortress?

15 A. I remember Fortress, yes.

16 Q. And you agree that the offer from the -- the sole offer
17 from Fortress was for debt funding; is that right?

18 A. The details of it are complex, so you should ask
19 Jonathan. I think there were elements of debt, but there
20 might have been some other elements of equity, as well, so
21 you should ask him.

22 Q. You agree, Mr. Rogers, that Fortress ultimately did not
23 end up funding Centripetal, right?

24 A. No, we did receive a term sheet from them, but we did
25 not -- we decided to go in a different direction.

~~Rogers, S. - Cross~~

1 Q. You didn't close, right?

2 A. We did not close, no. We didn't -- we decided we didn't
3 want to close.

4 Q. Now, Mr. Rogers, on direct exam Mr. Andre asked you about
5 Plaintiff's Exhibit -- excuse me. I'll get to that in a
6 minute.

7 You testified to Mr. Andre a few minutes ago that
8 you participated in this February 16 Webex meeting between
9 Centripetal and Cisco. Do you remember that testimony?

10 A. What testimony was that?

11 Q. Do you remember the questions Mr. Andre asked you about a
12 February '16 -- February 2016 meeting between Centripetal and
13 Cisco, a Webex meeting?

14 A. I remember he asked about it, yes.

15 Q. And do you remember you told him that you were certain
16 that Centripetal talked about its patents at that meeting?

17 A. Yes.

18 Q. I think your words were, "Of course we did."

19 A. Yes.

20 Q. Mr. Rogers, if we could turn to your deposition, to
21 Page 178, lines 6 through 21 -- Page 178 of your December
22 deposition, lines 6 through 21.

23 I'll read this exchange for the record.

24 THE COURT: I can read it.

25 THE WITNESS: Okay.

~~Rogers, S. - Cross~~

1 (There was a pause in the proceedings.)

2 THE COURT: Okay.

3 MR. MacBRIDE: Your Honor, may I confirm with the
4 witness that he was asked these questions, or I can move on?

5 THE COURT: No, I mean, you can ask him if you asked
6 him those questions and he gave you those answers, if you
7 wish.

8 BY MR. MacBRIDE:

9 Q. Were you asked these questions, and did you give these
10 answers?

11 A. Yes.

12 Q. Mr. Rogers, you also testified on direct about a
13 presentation that was used at that meeting. It's Plaintiff's
14 Exhibit 547. It's been introduced into evidence.

15 And Mr. Andre asked you some questions about this
16 presentation. I believe he asked you about Page 6 and
17 Page 7, and you provided some testimony about what was
18 discussed.

19 Isn't it true, sir, that you're not positive whether
20 this document was even used in that Cisco presentation?

21 A. What do you mean I'm not positive? It looks like it. I
22 don't have a perfect memory, but to the best of my knowledge,
23 it is the document.

24 Q. Well, let's -- I just want to understand. Are you
25 positive, or are you not sure?

~~Rogers, S. - Redirect~~

1 A. To the limits of my memory, I'm positive.

2 Q. Do you remember testifying differently before?

3 A. No.

4 Q. If we could go to Page 176 of your deposition, at
5 lines 16 to 23.

6 MR. MacBRIDE: Your Honor, I can read it, or I'm not
7 sure if the Court is just reading it to yourself. I'm happy
8 to proceed however you would like.

9 THE COURT: All right. Did you give those answers
10 to the questions?

11 THE WITNESS: Are you asking me?

12 THE COURT: Yes.

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 MR. MacBRIDE: Mr. Rogers, thank you very much for
16 your time.

17 Nothing further, Your Honor.

18 THE COURT: Any redirect?

19 MR. ANDRE: Just one question. This is Paul Andre.

20 REDIRECT EXAMINATION

21 BY MR. ANDRE:

22 Q. Mr. Rogers, could you explain to the Court the concept
23 you were talking about earlier regarding the speed that the
24 RuleGATE, or your product, handles and how that relates to
25 the patents, the Centripetal patents, that are in this case?

—Rogers, S. - Redirect—

1 A. Sure. So the ability to be able to filter at high speed
2 is not the only thing. There are other capabilities that are
3 required. We have to be able to correlate so that we can
4 identify who inside the network is talking to the remote bad
5 guy.

6 Because if you don't know that, then the defending
7 team can't do anything about it. They don't know what
8 computer is infected. We have to be able to handle
9 exfiltrations at the same time you have infiltrations. We
10 have to be able to swap the policies rapidly with new updates
11 to the threat intelligence, all these things.

12 And so these things, while they're not specific to
13 the filtering capability, they all have to run at speed.
14 That's why I said that they would all have to be fast to be
15 able to be effective as the filtering is effective.

16 Does that answer your question?

17 Q. It does. Thank you.

18 MR. ANDRE: I have no further questions, Your Honor.

19 THE COURT: All right. I think there's something in
20 the rules that counsel agreed upon -- there was some
21 discussion about recalling witnesses.

22 Is there any reason why either side would want to
23 recall Mr. Rogers?

24 MR. ANDRE: Your Honor, Centripetal does not intend
25 to call Mr. Rogers and will excuse him at this time.

~~Rogers, S. - Redirect~~

1 THE COURT: How about the defendant?

2 MR. MacBRIDE: No, Your Honor, no further need for
3 Mr. Rogers' time. Thank you.

4 THE COURT: All right. Mr. Rogers, you are excused
5 as a witness. Of course, I'm not sure if you were designated
6 the corporate representative or if your son was, but...

7 THE WITNESS: Your Honor, it was my son who was
8 designated.

9 THE COURT: Well, if you're not going to be recalled
10 as a witness, then it would be just like if we were all in
11 the courtroom. You can observe the proceedings by video, if
12 you choose to do so, but you cannot discuss your testimony
13 with other witnesses.

14 Do you understand what I mean by that?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay.

17 (Witness excused.)

18 THE COURT: Mr. Andre, have you got your next
19 witness?

20 MR. ANDRE: I do, Your Honor. We have Dr. Sean
21 Moore, the Chief Technology Officer of Centripetal. I don't
22 know if he's in the waiting room or not. Hopefully, he is.
23 Actually, he may be with -- hang on a second. They're
24 putting him on right now.

25 THE COURT: Okay. His name shows up as Jonathan

—Moore, S. - Direct—

1 Rogers on the display, but it's --

2 MR. ANDRE: There it is. They changed the name.

3 THE COURT: All right. I have it.

4 THE CLERK: Dr. Moore, raise your right hand,
5 please.

6 (Witness sworn.)

7 MR. GAUDET: Your Honor, before we begin with the
8 examination -- this is Matt Gaudet, on behalf of Cisco. I
9 will be doing the cross-examination of Dr. Moore, just so you
10 know we've changed on the Cisco side.

11 THE COURT: All right.

12 MR. ANDRE: May I proceed, Your Honor?

13 THE COURT: You may.

14 MR. ANDRE: Thank you.

15 SEAN MOORE, Ph.D., called by the Plaintiff, having
16 been first duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ANDRE:

19 Q. Good afternoon, Dr. Moore.

20 A. Good afternoon.

21 Q. Where do you currently work?

22 A. I work at Centripetal Networks.

23 Q. And what is your position at Centripetal?

24 A. I'm the Chief Technology Officer, and I'm also the Vice
25 President of Research.

—Moore, S. - Direct—

1 Q. What is your responsibility as the Chief Technology
2 Officer and the Vice President of Research?

3 A. Well, generally, it's to create, research, and develop
4 new technologies for protecting networks against cyber
5 attacks.

6 Q. Before we start talking about Centripetal, let's get into
7 your background a little bit.

8 Could you describe for the Court your education?

9 A. Sure. As shown on the slide here, in 1983, I received a
10 Bachelor's degree in electrical engineering from Tulane
11 University.

12 In 1990, I received a Master's degree in mathematics
13 from the University of New Orleans.

14 And in 1993 and '94, I received a Master's and Ph.D.
15 degree in computer science from Dartmouth College.

16 Q. And your jobs are listed below that. Can you tell us
17 what you did for BBN Technologies, and what kind of company
18 is that?

19 A. Sure. So BBN Technologies is a -- I describe them as an
20 R&D research services contractor for the government and for
21 the Department of Defense.

22 Just to make something concrete about that, so BBN,
23 in conjunction with DARPA, actually invented the Internet and
24 the base TCP/IP protocols back in the late '60s and early
25 '70s.

—Moore, S. - Direct—

1 Q. And what was your job title there? What kind of work did
2 you do for them?

3 A. So I was the lead scientist. I was also the Director of
4 the Advanced Systems Department, and I was also a business
5 development director for the entire company.

6 THE COURT: Did you say -- what did you say BBN
7 invented?

8 THE WITNESS: BBN invented the Internet, in
9 conjunction with DARPA, which is the Department of Defense
10 Advanced Research Projects Agency. Now, that happened before
11 I showed up there. That was in the late 1960s and early
12 1970s.

13 THE COURT: Well, there appear to have been
14 competing claims as to who invented the Internet, but you
15 believe that BBN did.

16 MR. ANDRE: Did Vice President Gore work at BBN?

17 MR. GAUDET: I was going to object that he was
18 impersonating the Vice President.

19 THE WITNESS: Okay. I want to be clear. Although I
20 worked at BBN Technologies, I did not invent the Internet.

21 THE COURT: All right.

22 THE WITNESS: I'm just trying to characterize the
23 type of work that they did and the type of environment that
24 was BBN. It was very creative, especially in the area of
25 network technologies.

—Moore, S. - Direct—

1 THE COURT: All right. You may proceed.

2 MR. ANDRE: Thank you, Your Honor.

3 BY MR. ANDRE:

4 Q. When you left BBN Technologies, what is Cetacean, and
5 what did you do there?

6 A. Cetacean Networks was a start-up company that was
7 developing internet routers that were designed to optimally
8 transport voice over IP, or telephone calls, and video
9 conferences over the Internet. And that was around the 2000
10 time frame, so that was quite disruptive, advanced technology
11 for the time, and I was the chief scientist at Cetacean
12 Networks.

13 Q. We noticed Mr. Steven Rogers, who was testifying before
14 you, had Cetacean on his background, as well.

15 Did you guys work together?

16 A. Yes. So Steven was the CEO and founder of Cetacean. He
17 hired me in 2001.

18 Yeah, we did work together. We were a great team.
19 You know, Steven has great visionary ideas, and, you know, I
20 like to think that I have the ability to design -- do the
21 math and the computer science and the algorithms to carry out
22 those ideas.

23 Q. After Cetacean, I see you went to Avaya. How did you get
24 to Avaya?

25 A. So Avaya acquired Cetacean Networks. Avaya is -- or at

—Moore, S. - Direct—

1 the time was the world's leading enterprise

2 telecommunications manufacturer, and I was brought in as the

3 chief architect and chief scientist.

4 Q. After that, you went to Centripetal Networks?

5 A. Yes.

6 Q. And let's talk about Centripetal. How long have you been
7 working at Centripetal?

8 A. I started there in April 2010, so just over ten years.

9 Q. And how many employees did Centripetal have when you
10 started?

11 A. I was the third employee. Steven Rogers, the founder and
12 CEO, was there, as well as Neel Price, the Vice President of
13 Sales.

14 Q. And what made you want to join Centripetal?

15 A. Well, there are several factors. So I had been at Avaya
16 for several years and -- how would I put it?

17 I really just felt like I needed to take my shot at
18 changing the world, and that wasn't going to happen at Avaya.
19 I knew Steven. You know, I worked with Steven ten years
20 before, and I knew Steven had a new company going, wanted to
21 do some exciting stuff.

22 So I contacted Steven. We stayed in touch over the
23 years, but I contacted him. We talked about what he wanted
24 to do. He wanted to solve the Internet cyber security
25 problem once and for all, and that was something I wanted to

—Moore, S. - Direct—

1 do, too. And I knew, you know, if anybody, Steven and I
2 could pull this off, so I decided to leave Avaya and join up
3 with Centripetal.

4 Q. What was the vision of the company at the time you joined
5 Centripetal?

6 A. Well, the vision was big. As I just said a moment ago,
7 we wanted to take our shot at solving the Internet cyber
8 security problems once and for all.

9 Q. Let me show you what's been marked as PTX-1219.

10 A. Okay.

11 Q. And you may not be able to see here, but if you go to the
12 second page, could you describe what this document is?

13 A. Well, this appears to be one of the web pages on our --
14 on the Centripetal website. I don't know if it's current,
15 but it's, you know, the "About Centripetal" page.

16 MR. ANDRE: Your Honor, we'd like to move
17 Exhibit PTX-1219 into evidence.

18 MR. GAUDET: No objection.

19 THE COURT: That exhibit will be admitted.

20 (Plaintiff's Exhibit PTX-1219 received in evidence.)

21 BY MR. ANDRE:

22 Q. If you go to the second page of this document, in the
23 first full paragraph -- can we pull that up? The page before
24 that. I'm sorry. There you go. It says, "The problem we
25 solve."

—Moore, S. - Direct—

1 There's a sentence that states, "By distributing and
2 applying cyber threat intelligence, it should be possible to
3 actively prevent most cyber attacks." Do you see that?

4 A. Yes, I do.

5 Q. What do you mean by that?

6 A. Well, so I said earlier, and I think it says in the first
7 sentence on the page, cyber security -- we wanted to solve
8 the Internet cyber security problem once and for all. We
9 knew we needed to use a completely different approach than
10 what had been done before, and we were aware that there was
11 what is called cyber threat intelligence. And what that is
12 is it's intelligence, data reports, about cyber criminals on
13 the Internet and which computers do they control, who are the
14 cyber criminals, and what types of attacks are they launching
15 from the computers that they control.

16 So that's what cyber intelligence is. Our idea was,
17 well, why don't we take the cyber threat intelligence, which
18 is interesting by itself, but let's somehow transform this so
19 that we can apply it to live internet traffic and see if we
20 can secure the Internet this way, by essentially shutting
21 down the cyber criminal communications and their attacks.

22 THE COURT: We don't know -- I don't see any date on
23 this document. It's from the plaintiff's website. I don't
24 know if there's any way we can determine the date. I don't
25 see a date on the document.

—Moore, S. - Direct—

1 MR. ANDRE: Your Honor, at the very last page -- or,
2 I guess, the third page there's a 2017 date.

3 But is there another date on this?

4 (There was a pause in the proceedings.)

5 MR. ANDRE: There appears to be a 2018 date on it.

6 THE COURT: Where is that?

7 MR. ANDRE: Is it the last page?

8 Yeah, there's a copyright on the very last page,
9 Your Honor, 2018.

10 THE COURT: Oh, okay. 2018. All right.

11 You may continue.

12 MR. ANDRE: Thank you, Your Honor.

13 BY MR. ANDRE:

14 Q. So have you ever heard of the term "operationalizing
15 cyber threat intelligence"?

16 A. Yes.

17 Q. What does that mean?

18 A. Well, first, let me say I believe we coined the term
19 "operationalized threat intelligence," and we invented
20 operational cyber threat intelligence technology, and I'll
21 probably refer to it as operationalized CTI, just because the
22 whole sentence is a mouthful.

23 So what is operationalized CTI? As I said earlier,
24 we were discussing cyber threat intelligence, and we'd get --
25 we'll get cyber threat intelligence from CTI providers, and

—Moore, S. - Direct—

1 we call this raw cyber threat intelligence. And, as I said
2 earlier, you know, by itself, this raw CTI is good stuff; it
3 tells us about cyber criminals, what they're doing, where
4 they are. Great, but we can't take it in that raw form and
5 apply it to live internet traffic to defend networks.

6 So what we do is we go through this transformation
7 process where we take the raw cyber threat intelligence, and
8 we call it operationalizing cyber threat intelligence. We're
9 transforming it into computer logic and algorithms that we
10 can then apply directly to the live internet traffic to stop
11 cyber attacks as they're occurring or before they even occur,
12 before they cause any damage.

13 Q. If we go to the next paragraph in PTX-1219, Pages 2 and
14 3, could you describe what you're discussing in that
15 paragraph?

16 A. Okay. So, yeah, as I described it, it seems
17 straightforward, you know, to take cyber threat intelligence,
18 operationalize it, and, therefore, stop cyber attacks. But
19 that step of transforming the raw CTI to operationalized CTI
20 is very difficult. We had to develop new mathematics, new
21 computer science, new algorithms, and develop new
22 technologies that could apply this operationalized CTI to
23 live internet traffic. This is a very difficult thing to do,
24 but we did it.

25 Q. Did it take you a long time?

—Moore, S. - Direct—

1 A. Well, yes, and I like to say we're still doing it. And,
2 you know, that has to do with how we're continually evolving,
3 improving our products, and that's in response to -- you
4 know, there's -- cyber attacks are always evolving and
5 changing themselves, and they're growing rapidly, as is the
6 associated cyber threat intelligence. It's also evolving
7 right along with it.

8 Our internet infrastructure changes, so, you know,
9 in 2010, Internet -- you know, let's just say 1- to
10 10-gigabits-per-second links were just coming into play, and
11 now it's 100-gigabits-per-second links. So things are
12 faster. We've got Clouds now, we've got other infrastructure
13 changes, and we have to adapt our technology.

14 And I'll also say, you know, another major component
15 of why we need to continually create new technologies is
16 encryption. You know, back in 2010, when we started the
17 company, you know, encryption was in use, but it was
18 generally in use for legitimate traffic for financial
19 transactions.

20 And then about that time frame, you know, cyber
21 criminals started using encrypted traffic. And then by, I'd
22 say, the 2015-2016 time frame, there was a big push to just
23 encrypt everything on the Internet. And that's pretty much
24 where we are today, but we have to continually evolve our
25 products, our operationalized CTI technologies, to adapt to

—Moore, S. - Direct—

1 encryption.

2 Q. Go to the next paragraph of this document, PTX-1219. You
3 talk about how Centripetal intended to solve the problem that
4 you were just discussing. Can you describe how, one,
5 RuleGATE was revolutionary new technology?

6 A. Sure. So RuleGATE is our platform upon which, you know,
7 we build all our operationalized CTI technologies. It's
8 revolutionary, if for any reason -- you know, operationalized
9 CTI technologies did not exist before we invented them.
10 Nobody could take raw cyber threat intelligence and apply it
11 to live Internet traffic to stop cyber attacks.

12 So the RuleGATE network appliance is the platform
13 upon which we build and deploy these operationalized CTI
14 technologies.

15 Q. Let me show you another document we've marked as PTX-957.

16 Dr. Moore, could you tell us what this document is?

17 A. This is a white paper that I wrote in the 2013 time
18 frame, I believe, on threat surface reduction.

19 Q. And what is a white paper?

20 A. Well, generally, in the technology industry, you'll write
21 white papers to communicate new technology concepts and their
22 benefits, but you'll do it in a way that you're not using,
23 like mathematics or, you know, implementation details of the
24 technology. It's like a technology marketing document.

25 Q. And on the cover, at the bottom, there's a date of

—Moore, S. - Direct—

1 April 30, 2015. Is that when you updated or published on the
2 website?

3 A. I don't really know what that date refers to.

4 Q. Okay. Fair enough.

5 I want to turn your attention to a figure in this
6 white paper, figure 3 -- figure 1, on Page 3.

7 Could you describe for the Court what these round
8 discs with red and black lines are and how that relates to
9 reducing the threat -- the surface reduction?

10 A. Okay. Sure. So, again, the white paper is kind of a
11 threat surface reduction, and this white paper was written to
12 say, well, you know, we know we need something new to solve
13 the Internet cyber security problem. We have a -- we've
14 invented a new defense methodology that we call threat
15 surface reduction. So these discs are a way of visualizing
16 what that is, so let me try to describe it briefly.

17 So each of these discs -- the center of the disc
18 represents your computers, your networks, that you want to
19 protect from cyber criminals, cyber threats. Now, the
20 perimeter of these discs represent all the Internet computers
21 that are out there. There's billions of computers, desktops,
22 mobile phones, et cetera. And the radius of these discs
23 represent communications between all the Internet computers
24 and your computer, your network, at the center of the disc.

25 So what the disc on the left represents is what we

—Moore, S. - Direct—

1 call the threat surface. Cyber criminal computers that can
2 communicate with your computer at the center, that
3 communication is represented by red lines. These are bad.
4 Cyber criminal, red, bad. They're attacking or they can
5 attack your computer. The white lines represent -- well,
6 these are legitimate computers that can communicate with
7 yours.

8 And so it's the idea of -- you know, so the disc on
9 the left, the red lines, red you think of this is your threat
10 surface, and what we want to do as a defense methodology is,
11 well, let's eliminate those red lines. Let's, you know,
12 block communications between cyber criminal computers and our
13 computer networks at the middle of the disc.

14 So as we transition from left to right, let's say
15 here, we're reducing the threat surface. We're turning those
16 red lines into black, and once we have all the red lines
17 turned to black, we totally reduce the threat surface of the
18 Internet, and we are protected from cyber criminals, because
19 they can't communicate -- their computers can't communicate
20 with ours.

21 Q. Thank you.

22 MR. ANDRE: And, Your Honor, I'd like to move this
23 document, PTX-957, into evidence.

24 MR. GAUDET: All right. Your Honor, we do have an
25 objection. It's a foundation objection that I suspect

—Moore, S. - Direct—

1 Mr. Andre will be able to clear up.

2 It's that the witness testified that he thought he
3 wrote this in 2013, or wrote a document in 2013, and this
4 document indicates it was written on April 30, 2015, on the
5 bottom right of the first page. And so perhaps if Mr. Andre
6 just clarifies that, we would withdraw the objection.

7 THE COURT: Well, the witness said he didn't know
8 what that date meant. As long as that date is subsequent to
9 the date that he said he prepared it, I don't see that
10 there's a problem. So I think the foundation is properly
11 laid.

12 But I do have a question, and that is in the
13 diagram, you show all of these entrances from the outside to
14 the computer to be blocked. I suppose -- well, I don't mean
15 to say, "be blocked." They have security applied to them.
16 So that's what it means. It doesn't mean that you're
17 blocking all of these pathways, it means that you're applying
18 your RuleGATE security to all of these lines, radius lines,
19 inside the circle. Is that right?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 (Plaintiff's Exhibit PTX-957 received in evidence.)

23 BY MR. ANDRE:

24 Q. Thank you, Dr. Moore.

25 Now, you're an inventor on all the patents in this

—Moore, S. - Direct—

1 case, correct?

2 A. Yes.

3 Q. Are patents important to Centripetal?

4 A. Yes, they're very important.

5 Q. And why is that?

6 A. Well, you know, we've made tremendous investments --
7 time, energy, money, promotional investments -- in this
8 technology, and we want to protect ourselves from somebody
9 else copying or stealing the technologies.

10 Q. What's the process that you use at Centripetal to come up
11 with these inventions and then go through the patent process?

12 A. Sure. Well, you know, this was this idea of
13 operationalizing cyber threat intelligence. It was a new
14 idea, and so there's always new cyber attacks, new things we
15 need to defend against, and so we're always coming up with
16 new ideas and coming up with, you know, ideas about, well,
17 how are we going to develop technologies that will do this?
18 And once we figure that out, the ideas and how we might
19 realize them, then we file for patents.

20 And then subsequent to that, we develop the
21 technologies and get them into our products.

22 Q. What were the kinds of problems that you were trying to
23 solve with the technology described in these patents?

24 A. You know, I'll just say generally it's, how do we, you
25 know, operationalize cyber threat intelligence to stop cyber

—Moore, S. - Direct—

1 attacks, in all their many forms, that are continually
2 evolving all the time?

3 Q. And the technology you describe in your patents, do you
4 put those into the Centripetal products?

5 A. Yes.

6 Q. Let me show you what's been marked as JTX-1, the '205
7 patent.

8 MR. ANDRE: And, Your Honor, I would like to move
9 JTX-1 into evidence.

10 MR. GAUDET: No objection.

11 THE COURT: I'm sorry. What are you asking to
12 introduce?

13 MR. ANDRE: This is Joint Trial Exhibit Number 1,
14 the '205 patent. I'd like to move it into evidence.

15 MR. GAUDET: No objection, Your Honor.

16 THE COURT: All right.

17 (Joint Trial Exhibit JTX-1 received in evidence.)

18 THE COURT: I have a question for Dr. Moore. The
19 purpose, I think I understood you to say, for all of these
20 patents, is to operationalize, which I assume you mean make a
21 functioning part of your product --

22 THE WITNESS: Yes.

23 THE COURT: -- threat intelligence that you acquire.

24 THE WITNESS: Yes.

25 THE COURT: Does that mean that you acquire this

—Moore, S. - Direct—

1 threat intelligence from sources other than your own systems?

2 THE WITNESS: Yes, it does. So --

3 THE COURT: Well, where do you get this threat
4 intelligence from?

5 THE WITNESS: Yes, Your Honor. So there's actually
6 a thriving ecosystem of companies that are generally called
7 CTI providers, cyber threat intelligence providers. These
8 are independent organizations that go out, watch what's going
9 on on the Internet, watch what the cyber criminals are doing,
10 and they create this cyber threat intelligence, they support;
11 you know, who are the cyber criminals, what computers do they
12 control, and what types of attacks are they doing? And they
13 publish this information by subscription.

14 So our organization, our products, we subscribe to
15 the CTI from many of the CTI providers. I think we have
16 business relationships with on the order of a hundred of
17 these CTI providers. And they all provide different types of
18 cyber threat intelligence, and so we get all of our cyber
19 threat intelligence from these, you know, approximately
20 hundred CTI provider organizations.

21 THE COURT: Are they international in scope?

22 THE WITNESS: Yes.

23 THE COURT: Uh-huh. All right. You may proceed,
24 Mr. Andre.

25 MR. ANDRE: Thank you, Your Honor.

—Moore, S. - Direct—

1 BY MR. ANDRE:

2 Q. Dr. Moore, we're looking at the front page of the '205
3 patent, and, first of all, are you an inventor of this
4 patent?

5 A. Yes.

6 Q. Now, if I were to tell you -- ask you questions about
7 interpreting the claims of these patents and giving me a
8 legal interpretation, could you do so?

9 A. I cannot. I'm not a patent lawyer. I'm not qualified to
10 do that.

11 Q. If I asked you about the technology, about these patents,
12 could you give me that answer?

13 A. Yes.

14 Q. All right. Let's talk about the technology, then, of the
15 '205 patent.

16 What problems were you trying to solve with the '205
17 patent? And just describe generally what the patent is
18 about, from a technology point of view.

19 A. Sure. I characterize this as our network protection
20 system technology that enforces these operationalized CTI
21 policies on wide network traffic.

22 So it enforces CTI policies. These are dynamic
23 security policies applied to live network traffic to stop
24 cyber attacks.

25 Q. And I'm going to show you a document we marked as

—Moore, S. - Direct—

1 PTX-1112 and ask you have you seen this document?

2 A. Yes, I have.

3 Q. And what is this document?

4 THE COURT: Where?

5 MR. ANDRE: I'm sorry. This is PTX-1112, Your
6 Honor. 1112.

7 THE COURT: Okay, PTX-1112. Okay.

8 You may proceed.

9 MR. ANDRE: Thank you.

10 BY MR. ANDRE:

11 Q. Dr. Moore, what is this document?

12 A. Well, this document -- first, let me say this document
13 was given to me by Steven Rogers shortly after I joined the
14 company in April 2010, and what this is is a program
15 description published by the Office of Naval Research,
16 announcing that they've got a program scoped out for doing
17 research, funded research, into solving the computer network
18 defense problem.

19 MR. ANDRE: Your Honor, I would like to move
20 PTX-1112 into evidence.

21 MR. GAUDET: No objection.

22 THE COURT: That exhibit will be admitted.

23 (Plaintiff's Exhibit PTX-1112 received in evidence.)

24 BY MR. ANDRE:

25 Q. If we go down to Section 6 of the document on the first

—Moore, S. - Direct—

1 page, entitled "Research Opportunity Description," could you
2 describe what the Office of Naval Research was looking for?

3 A. Yes. So call it the -- the title of the whole program is
4 called "Computer Network Defense," and what the Office of
5 Naval Research -- I'll refer to it as ONR -- says in the
6 first sentence, they're looking for innovative research
7 proposals for new technologies that support proactive cyber
8 network defense.

9 So, you know, they're saying -- well, I think in
10 later sections they talk about what problem they really need
11 to solve, but they need to protect the Department of the Navy
12 networks, and they're looking for people to research new
13 technologies to do that.

14 Q. And how did this document influence your motivation to
15 come up with the technology that was in the '205 patent?

16 A. Well, what got our attention right away was the wording
17 in that first sentence that says, "We need proactive cyber
18 network defense."

19 Now at this point we already thought of the idea of
20 operationalizing cyber threat intelligence, and one reason we
21 loved that idea was we felt it was the first way ever that
22 could be used to proactively defend networks. So when Steven
23 saw this program announcement and gave it to me, we keyed in
24 on the wording -- "Oh, they're looking for proactive cyber
25 network defense solutions. We think we know how to do that."

—Moore, S. - Direct—

1 Q. And what's the difference between proactive defense and
2 reactive defense?

3 A. Okay. So reactive defense -- well, let me start with
4 saying what's proactive defense.

5 Well, the basic idea of proactive defense is we need
6 to be able to stop cyber attacks before they even occur,
7 before they can cause any damage, which may sound like, how
8 is that possible? Well, it is possible if you operationalize
9 cyber threat intelligence.

10 Now, that's opposed to at the time the existing
11 state-of-the-art were what were called reactive defenses,
12 which is really not a defense at all. It's after-the-fact
13 forensics on looking at historical data, trying to figure out
14 if you were even attacked, and if you do look at historical
15 data and say, oh, we think we got attacked at a certain time
16 in the past, you react to that by coming up with possible
17 defense measures in the future.

18 But it's reactive. It doesn't stop the attacks at
19 all before they occur. The damage has already happened, and
20 you're just reacting to an attack that already occurred in
21 order to defend. What you want, of course, is proactive,
22 which stops these attacks before they even occur, before they
23 cause any damage, and that's what the ONR is looking for.

24 Q. Go down to the next section, 6.1. It talks about the
25 background of this program.

—Moore, S. - Direct—

1 And could you describe what the ONR, the Office of
2 the Naval Research, was talking about with respect to the
3 background upon which this program was based?

4 A. Sure. So, in a nutshell, what they're saying here is
5 that cyber attacks are growing explosively. They have
6 advanced technology capabilities now, and we need to be able
7 to stop these attacks or mitigate them in real time, while
8 still being able to operate our networks effectively.

9 And they're also saying that, unfortunately, current
10 conventional network defense tools --they're reactive, not
11 proactive, and these just aren't going to work. So we're not
12 going to invest more money in reactive solutions that don't
13 work. We're going to invest money, research, into proactive
14 solutions.

15 Q. Let's go back to the first page of this document, and
16 under the response date -- was this the state-of-the-art at
17 about 2010, in the time frame of this paper or this proposal?

18 A. Yes.

19 Q. Okay. If we go back to the second page of the document,
20 the first full paragraph, where it says, "To enable
21 war-fighter posture," do you see that?

22 A. Yes.

23 Q. Can you explain what the Office of Naval Research is
24 requesting in this proposal?

25 A. Yes. So they're saying, look, we know that we need to

—Moore, S. - Direct—

1 change our posture from these reactive forensic, historical
2 approaches to computer network defense, to completely pivot
3 and go to a proactive approach to cyber defense, which means
4 we need to, you know, stop the cyber attacks before they
5 occur in real time, you know, on live network traffic.

6 I should also add they're not saying they know how
7 this can be done. They're saying this is what we need. We
8 don't know how to do it. We want -- we will pay people to
9 research this problem and develop new technologies that are
10 proactive, that are predictive.

11 MR. ANDRE: Your Honor, I'm about ready to go to
12 another exhibit. I know it's 4:00. Do you want to adjourn
13 until tomorrow morning?

14 THE COURT: Yes. I was wondering if this would be a
15 good time. If you're moving on to another exhibit, I think
16 this would be the right time for us to adjourn.

17 Dr. Moore, when we interrupt a witness's testimony
18 in the middle of it, so to speak, the rule is that you should
19 not consult anything or discuss anything with anyone that
20 would add to the knowledge of your subject matter of your
21 testimony.

22 In other words, you should take tonight off and
23 return to testify tomorrow without adding any new knowledge
24 of what your anticipated testimony is going to be.

25 THE WITNESS: I understand, Your Honor.

1 THE COURT: All right. So we'll be adjourned for
2 today, and we'll try to resume at 10:00 Eastern Time. I
3 don't know where you're testifying from.

4 Where are you? Where are you, geographically?

5 THE WITNESS: Oh. I'm in Portsmouth, New Hampshire.

6 THE COURT: I was wondering about the background.

7 MR. GAUDET: Your Honor, I was wondering why that
8 boat is stalled. It's been there the whole time.

9 THE COURT: Well, it's a tugboat. I guess it
10 doesn't have any business today. It must be on lockdown.

11 THE WITNESS: The real time is just to my right
12 here. It looks pretty much like that, except the boats are
13 actually moving.

14 THE COURT: Okay. Well, we'll be adjourned until
15 10:00 tomorrow morning --

16 MR. GAUDET: Thank you, Your Honor.

17 THE COURT: -- as far as the witness is concerned.
18 I'll ask counsel to stay on just a moment.

19 Is there anything else that we need to take up
20 today, counsel?

21 MR. ANDRE: Nothing from Centripetal, Your Honor.
22 We're good. Thank you.

23 MR. GAUDET: And nothing from Cisco, Your Honor.
24 Thank you.

25 THE COURT: Have you exchanged information as to who

1 tomorrow's witnesses are expected to be?

2 MR. ANDRE: Yes, Your Honor. Tomorrow we will --
3 after Dr. Moore is off the stand, we have a couple short
4 deposition clips of Cisco witnesses we're going to play for
5 Your Honor, and then Dr. Michael Mitzenmacher, one of
6 Centripetal's infringement experts, will be taking the stand
7 and talking about three of the patents.

8 THE COURT: All right. Okay. Anything further from
9 the defendants?

10 MR. GAUDET: Nothing from Cisco, Your Honor. Thank
11 you.

12 THE COURT: All right. Well, then, we'll be
13 adjourned until tomorrow morning at 10:00.

14 (The proceedings recessed at 4:03 p.m.)

15 CERTIFICATION

16
17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled matter.

19

20

21 _____/s/_____

22 Carol L. Naughton

23 May 7, 2020

24

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